

Decision **DRAFT DECISION OF ALJ COOKE** (Mailed 7/9/2002)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the
Commission's Own Motion to Consider
Modifications to the Universal Lifeline Telephone
Service Program and General Order 153.

Rulemaking 98-09-005
(Filed September 3, 1998)

OPINION AWARDING COMPENSATION

This decision modifies Decision (D.) 02-02-024, which awarded Greenlining Institute and Latino Issues Forum \$27,720.00 in compensation for their contribution to D.00-10-028. Consistent with D.02-05-011, we modify the hourly rates adopted for attorneys Susan Brown and Robert Gnaizda. This change results in a total award of compensation of \$29,254.00. The incremental difference (\$1,534.00) shall be paid to Greenlining Institute and Latino Issues Forum, with interest commencing March 3, 2001, from the intervenor compensation program fund, as described in D.00-01-020.

Background

In D.02-02-024, we awarded Greenlining Institute and Latino Issues Forum \$27,720.00 in compensation for their substantial contribution to D.00-10-028. Their work was performed in 1998, 1999, and 2000. To set rates, we relied on the rates adopted in D.00-04-003 and D.01-09-045 for Brown and Gnaizda. Greenlining Institute and Latino Issues Forum had requested rates be set at \$275/hour for Brown and \$375/hour for Gnaizda for all hours worked.

D.01-09-045 relied in part on rates adopted in D.00-04-003. Greenlining Institute and Latino Issues Forum filed a timely application for rehearing of D.00-04-003, which was resolved in D.02-05-011. Greenlining Institute and Latino Issues Forum also filed a petition to modify D.00-04-003, which was resolved in the order disposing of the application for rehearing. Although D.02-05-011 denied the application for rehearing, the Commission took the opportunity presented by the request to reevaluate the rates awarded to several attorneys and experts for Greenlining Institute and Latino Issues Forum.

In D.02-05-011, we set new 1998 rates for Brown and Gnaizda at \$260/hour and \$290/hour, respectively. We have subsequently modified D.00-04-011 and D.01-09-011, consistent with the Commission's directive that we revisit the rates adopted in orders that followed D.00-04-003, in light of its modification. Today's decision also responds to that requirement.

Hourly Rates

In D.02-05-011 we set a 1998 rate for Brown at \$260/hour. In the claim resolved by D.01-09-011, Greenlining Institute and Latino Issues Forum requested a rate of \$275/hour for work performed in 1998 through 2000. The 1998 rate adopted in D.02-05-011 should be used to award compensation for work performed in 1998. Consistent with the rate requested by Brown, we adopt \$275/hour as the rate for Brown's work in this proceeding in 1999 and 2000. This rate is at the high end of rates awarded to Brown's peer group of Commission practitioners for 1999. The \$275/hour rate for 2000 does not reflect any change from 1999 rates to account for changes in market rates for legal services between 1999 and 2000. Because it reflects her 1999 rate, we do not consider the modified 2000 rate we adopt today for Brown to limit the Commission's ability to set a different rate for 2000 in a different proceeding.

In D.02-05-011 we set a 1998 rate for Gnaizda at \$290/hour. In this claim, Greenlining Institute and Latino Issues Forum requested a rate of \$375/hour for work performed in 1998 through 2000. The 1998 rate adopted in D.02-05-011 should be used to award compensation for work performed in 1998. Consistent with the discussion in D.02-05-011, we look to the hourly rates adopted for Michel Florio of The Utility Reform Network (TURN) to set a rate for Gnaizda for 1999 and 2000. In 1999, Florio was awarded \$300/hour (see D.99-11-049). In 2000, Florio was awarded \$310/hour (see D.00-10-020). We will utilize these same rates for Gnaizda for 1999 and 2000.

We make these changes based on our comparison of the market rates, as described in *Of Counsel*, in place over this time period and the hourly rates awarded to other intervenors, with similar backgrounds and experience, who appeared before the Commission over the same time period. Greenlining Institute and Latino Issues Forum did not make these same types of comparisons, which we find particularly useful in evaluating hourly rates, so we take this opportunity to encourage them to do so in future claims.

We make no changes to other hourly rates adopted in D.02-02-004.

Award

Utilizing the revised hourly rates for Brown and Gnaizda, the total award to Greenlining Institute and Latino Issues Forum is \$29,254.00, as calculated below.

AWARD BASED ON REVISED RATES

Witness/Advocate	Year	Hours	Rate	
Brown	1998	26	\$ 260.00	\$ 6,760.00
Brown	1999	13	\$ 275.00	\$ 3,575.00
Brown	2000	36	\$ 275.00	\$ 9,900.00
Brown (Compensation)	1998	2	\$ 130.00	\$ 260.00
Brown (Compensation)	2000	2	\$ 137.50	\$ 275.00
Gnaizda	1998	1.6	\$ 290.00	\$ 464.00
Gnaizda	1999	0.4	\$ 300.00	\$ 120.00
Gnaizda	2000	3	\$ 310.00	\$ 930.00
Gonzalez	1998	6	\$ 135.00	\$ 810.00
Gamboa	1998	6	\$ 135.00	\$ 810.00
Hernandez	1999	44	\$ 75.00	\$ 3,300.00
Hernandez	1999	12	\$ 37.50	\$ 450.00
			Subtotal	\$ 27,654.00
			Other Costs	\$ 1,600.00
			Total Award	\$ 29,254.00

Of this amount, \$27,720.00 has already been paid, resulting in an increased award of \$1,534.00. Consistent with how we allocated responsibility for the award adopted in D.02-02-024, payment of the \$1,534.00 increment will be made from the intervenor compensation program fund, as described in D.00-01-020.

Consistent with previous Commission decisions, we will order that interest be paid on the incremental award amount (calculated at the three-month commercial paper rate), commencing March 3, 2001 (the 75th day after Greenlining Institute and Latino Issues Forum submitted their compensation request), and continuing until full payment is made.

As in all intervenor compensation decisions, we put Greenlining Institute and Latino Issues Forum on notice that Commission staff may audit their records related to this award. Thus, they must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Their records should identify specific issues for which compensation is requested, the

actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation may be claimed.

Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure.

Findings of Fact

1. D.02-05-011 adopted 1998 hourly rates for Brown and Gnaizda of \$260/hour and \$290/hour, respectively.
2. Greenlining Institute and Latino Issues Forum requested 1998, 1999, and 2000 hourly rates for Brown of \$275/hour.
3. \$275/hour is at the high end of rates awarded to Brown's peer group of Commission practitioners for 1999.
4. Greenlining Institute and Latino Issues Forum requested 1998, 1999, and 2000 hourly rates for Gnaizda of \$375/hour.
5. Florio of TURN was awarded \$300/hour in 1999 and \$310/hour in 2000.

Conclusions of Law

1. Brown should be awarded \$275/hour for work in 1999 and 2000.
2. Because the adopted 2000 rate for Brown does not reflect any change from 1999 rates to account for changes in market rates for legal services, the modified 2000 rate adopted today should not limit the Commission's ability to set a different rate for 2000 in a different proceeding for Brown.
3. Gnaizda's 1999 and 2000 rates should be set consistent with the rates awarded to Florio of TURN.
4. Greenlining Institute and Latino Issues Forum should be awarded an additional \$1,534.00 for their contribution to D.00-10-028.

5. This order should be effective today so that Greenlining Institute and Latino Issues Forum may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. Greenlining Institute and Latino Issues Forum, collectively, are awarded an additional \$1,534.00 in compensation for their substantial contribution to Decision (D.) 00-10-028.
2. The award shall be paid from the intervenor compensation program fund, as described in D.00-01-020.
3. Payment of the additional award shall include interest at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13, with interest, beginning March 3, 2001, and continuing until full payment is made.
4. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.